



U.S. Department of Justice

Immigration and Naturalization Service

12B

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



Date: MAY 12 2000

IN RE: Applicant:

APPLICATION:

IN BEHALF OF APPLICANT: Self-represented

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prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Terrance M. O'Reilly, Director  
Administrative Appeals Office

**DISCUSSION:** The application was denied by the District Director, San Antonio, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The applicant was born in [REDACTED] Germany, on June 24, 1954. The applicant's father, [REDACTED], was born in the United States on November 27, 1931. The applicant's mother, [REDACTED] was born in Germany and never became a U.S. citizen. The applicant's parents never married. The applicant seeks a certificate of citizenship under § 309 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1409.

The district director determined in an amended decision that the applicant had failed to establish that he was legitimated by his U.S. citizen father prior to age 21 under the law of the father's domicile as required under section 309 of the Act. The district director denied the application accordingly.

On appeal, the applicant argues that § 309 of the Act should not be applied differently for mothers and fathers of children born out of wedlock. The applicant states that neither he nor his father were aware of their relationship until after the applicant was over the age limit contained in the Act.

Montana v. Kennedy, 278 F.2d 68, affd. 366 U.S. 308 (1961), held that to determine whether a person acquired citizenship at birth abroad, resort must be had to the statute in effect at the time of birth.

Section 309(a) of the Act was amended by Pub. L. 99-653 and was effective as of the date of enactment, November 14, 1986. The old § 309(a) shall apply to any individual who has attained 18 years of age as of the date of the enactment of this Act.

Section 309(a) of the Act in effect at the time of the applicant's birth provides as follows:

The provisions of paragraphs (c), (d), (e), and (g) of § 301, and paragraph (2) of § 308, of this title shall apply as of the date of birth to a child born out of wedlock on or after the effective date of this Act [viz., December 24, 1952], if the paternity of such child is established while such child is under the age of 21 years by legitimation.

The record reflects that the applicant's father has satisfied the physical presence requirements. The record also contains a court decree from North Carolina which reflects that the applicant was declared the legitimate child of [REDACTED] on August 19, 1998 at the age of 44 years.

8 C.F.R. 341.2 provides that the burden of proof shall be upon the claimant, or his parent or guardian if one is acting in his behalf, to establish the claimed citizenship by a preponderance of the evidence.

The applicant was well beyond the statutory age when he was legitimated; therefore, has not met that burden. Accordingly, the appeal will be dismissed. This decision is without prejudice to the applicant seeking U.S. citizenship through normal naturalization procedures.

**ORDER:** The appeal is dismissed.